

PATENT

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this correspondence for Application No. 10/710,711 is being electronically transmitted via EFS-WEB, on March 11, 2008.

/Randall S. Jackson, Jr./

March 11, 2008

Randall S. Jackson, Jr.

Date

Reg. No. 48,248

Applicant(s): DeLong et al.  
Serial No.: 10/710,711  
Filed: July 29, 2004  
Group Art Unit: 3612  
Confirmation No.: 4710  
Examiner: Joseph Pape  
Title: Removable Multipurpose Console  
Attorney Docket: MASLIAC-50

Cincinnati, Ohio 45202

March 11, 2008

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY BRIEF**

Sir:

This Reply Brief responds to the Examiner's Answer mailed January 11, 2008.

Appellant submits the following remarks to the Examiner's response.

**Rejection of claim 8 under 35 U.S.C. § 103(a) as unpatentable over Soeters in view of Larsen**

The Examiner maintains the rejection of claim 8, arguing on p. 7 (of the Examiner's Answer) that Soeters "discloses latching mechanism 54 which is fixedly secured to a lower surface of the walls of the housing." However, as clearly shown in Fig. 1 of Soeters, the latching mechanism that secures the housing or console 20 is mounted to the sides 22 of the housing above their bottom edges 22'. The passage in Soeters referenced by the Examiner makes this clear as well. The passage reads: "the first or front female bracket 30 is shown in greater detail, as is its mating bracket 50 which is mounted between the sides of console 20." Col. 3, lines 1-4 (emphasis added). The bracket would not need to be mounted between the console sides if it were mounted to the bottom edges.

Moreover, additional passages in Soeters suggest that mounting the bracket to the bottom edges would be undesirable. For example, Soeters notes that the "[b]racket 50 includes a generally U-shaped crossbeam 52 which extends between the sides 22 of console 20 and is secured thereto in a conventional manner near the lower edge 22' of the console to position the bracket in the proper vertical location with respect to bracket 30 mounted to the vehicle floor." Col. 3, lines 8-14 (emphasis added). The bracket is secured "near" the lower edges of the console, rather than "to" the lower edges, for a specific reason—to properly position the bracket for engaging a mating component on the vehicle floor. If the bracket were secured to the lower edges, as alleged by the Examiner, a gap would be created between the lower edges of the console and the vehicle floor. Such a gap may be undesirable for a variety of reasons (aesthetics, vibration, ability of the console to effectively store items because of its open base configuration, etc.).

Thus, Appellants submit that Soeters fails to disclose "the latching mechanism being fixedly secured to a lower surface of the housing," as recited in Appellants' claim 8. Appellants further submit that Larsen likewise fails to disclose any latching mechanism for releasably engaging a mounting mechanism on a vehicle. Therefore, for at least this reason, Appellants respectfully request that the rejection of claim 8 as unpatentable over Soeters in view of Larsen be reversed.

With respect to the transport device recited in claim 8, the Examiner characterizes Appellants' argument as "pointing out that Larsen et al. does not disclose all of the claimed

features taken alone." Examiner's Answer mailed January 11, 2008, p. 7. Appellants appreciate that the Examiner is relying upon the combination of Soeters and Larsen to reject claim 8. What Appellants argued in the Appeal Brief was that Larsen does not disclose a transport device for a multipurpose console itself. Larsen instead discloses a removable strap 51 for totes 16 designed to be removed from a console base 13 coupled to a vehicle floor. To this end, the removable totes in Larsen are analogous to the removable bins discussed in Soeters at col. 3, line 68 – col. 4, line 5. With respect to both Soeters and Larsen, the console housing remains coupled to the vehicle even when the bins/totes are removed. Thus, if anything, the combination of Soeters in view of Larsen merely suggests the use of removable straps on the removable bins, not the use of such straps on the console housing itself.

The Examiner attempts to strengthen his position by pointing to the "rear housing edge shown in Figure 1" of Soeters as "a transport device comprising a curved bottom." Examiner's Answer mailed January 11, 2008, p. 4. However, nothing in Soeters teaches or suggests the rear housing edge being configured "to transport the housing when the housing is removed from the vehicle," as recited in claim 8. Indeed, the fact that the console in Soeters includes an open base suggests that the console is not likely intended to be transported. Moreover, in any event, the rear housing edge in Soeters is not "configured to removably connect with the housing," as further recited in claim 8. Appellants submit that the Examiner's characterization of the rear housing edge in Soeters as a "transport device" as that term is used in Appellants' claim 8 is unreasonable and reflects the impermissible use of hindsight. See Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 36 (1966) (warning against a "temptation to read into the prior art the teachings of the invention in issue"); KSR Intern. Co. v. Teleflex Inc., 127 S.Ct. 1727, 1743 (2007) ("A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.").

Therefore, for at least these additional reasons, Appellants respectfully request that the rejection of claim 8 as unpatentable over Soeters in view of Larsen be reversed.

**Rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable over Soeters in view of Larsen**

The Examiner argues that the "at least one" language in claim 10 "requires only one of the two [claimed] features." Examiner's Answer mailed January 11, 2008, p. 8. Because

of this interpretation, the Examiner relies upon the disclosure of one of the features (a power contact) in Soeters to render the claim unpatentable, and considers Appellants' arguments with respect to the other feature (a sound contact) to be moot. Appellants submit that the multipurpose console of claim 10 includes both a power contact and sound contact such that arguments with respect to the sound contact cannot be considered moot.

For example, claim 8 recites the multipurpose console including a power contact. Claim 9 depends from claim 8 and recites the console further including a sound contact. Any claim that depends from claim 9 must therefore include a power contact and a sound contact (emphasis added).

Claim 10 depends from claim 9 and recites "wherein the latching mechanism includes at least one of the power and sound contacts, the power and sound contacts adapted to cooperate with mating power and sound contacts of the vehicle when the latching mechanism is fastened to the mounting [mechanism] of the vehicle" (emphasis added). Including the phrase "at least one" in claim 10 does not change the fact that the multipurpose console includes both a power contact and a sound contact. The "at least one" language merely indicates one or both of the power and sound contacts are part of the claimed latching mechanism. Even if the latching mechanism only included the power contact, both the power contact and sound contact are "adapted to cooperate with mating power and sound contacts when the latching mechanism is fastened" to the vehicle. This latter claim language is what Appellants focused on in their arguments.

Therefore, Appellants submit that the Examiner's interpretation of the "at least one" language in claim 10 is in error, and that the arguments Appellants presented in their Appeal Brief related to the sound contact are not moot. For at least those reasons, Appellants respectfully request that the Board reverse the Examiner's rejection of claim 10 as being unpatentable over Soeters in view of Larsen.

### **Conclusion**

In view of the foregoing remarks and the Appeal Brief filed August 27, 2007, Appellant respectfully urges the Board to reverse the rejections of claims 8-15.

Appellant does not believe that any fee is due in connection with this submission. However, if any fees are necessary to complete this communication, the Commissioner may

consider this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

Respectfully submitted,  
WOOD, HERRON & EVANS, L.L.P.

Date: March 5, 2008

By: /Randall S. Jackson/  
Randall S. Jackson, Reg. No. 48,248

2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202  
(513) 241-2324